Calendar No. 418

101ST CONGRESS *1st Session*	SENATE	REPORT 101-225

CAMPAIGN ADVERTISING ACT

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 1009

NOVEMBER 21 (legislative day, NOVEMBER 6), 1989.—Ordered to be printed

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101ST CONGRESS
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SENATE

REPORT
101-225

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MAY 26 (legislative day, MAY 18, 1989.—Ordered to be printed

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 1009]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1009) to amend section 315 of the Communications Act of 1934 with respect to the purchase of broadcasting time by candidates for public office, having considered the same, reports favorably thereon and recommends that the bill do pass.

PURPOSE OF THE BILL

The objective of S. 1009 is to clarify section 315(b) of the Communications Act of 1934 (the "Act") to achieve its original intent of enhancing the amount of information available to the electorate. This legislation ensures that condidates for political office will pay the lowest unit rate for broadcast advertisements by eliminating the different classes of commercial time and by prohibiting broadcasters from preempting candidates' advertisements.

BACKGROUND AND NEEDS

HISTORY

In 1952, Congress amended the Act as follows:

> The charges made for the use of any broadcasting station for any of the purposes set forth in this section [facilities for candidates for public office] shall not exceed the charges made for comparable use of such station for other purposes.

See, Public Law No. 82-554, amending 47 U.S.C. 315(b). The purpose of this provision, the so-called "comparable use" provision, was to prohibit broadcasters from charging advertising rates that discriminated in favor of commercial advertisers and against candidates.[1] This provision was subsequently interpreted by the Federal Communications Commission (FCC) to require that " [a]ll discounts otherwise offered by a station to commercial advertisers * * * be available to all candidates for public office." 28 Fed. Reg. 13,572 (1963) (47 C.F.R. Section 73.1940(b)(2)). At that time, the discounts available to commercial advertisers and political candidates included: bulk and frequency (volume); preemptible (where an advertisement is scheduled for a specific time but can be bumped if the time is sold to a higher bidder); immediately preemptible (which are cheaper than preemptible spots because they can be sold to a higher bidder without notice and without an option to buy); and run-of-station (which provide no guarantee that the spots will run at a specific time or that they will be run at all).

In 1972, Congress amended 315(b) of the Act to ensure candidates were not discriminated against and because of its concern about the escalating costs of elections in general, including the cost of broadcast advertising. The Federal Election Campaign Act of 1971 took "a comprehensive approach to the problem of political campaign reform and excessively high campaign costs. Its provisions [dealt] with the communications media, campaign contributions, disclosure and reporting requirements, and tax incentives to encourage the small donor to contribute to the candidate or party of his choice." S. Rept. No. 96, 92d Cong., 1st Sess. 33 (1971). In the Federal Election Campaign Act, Congress amended section 315(b) to require broadcasters to sell advertising time to political candidates at the "lowest unit charge . . . for the same class and amount of time". Under the FCC's interpretation, the work " 'class' refers to rate categories such as fixed spots, preemptible spots, and run-of-schedule and special rate packages." See, *Use of Broadcast and Cablecast Facilities by Candidates for Public Office*, 34 FCC 2d 510, 524 (1972).

The lowest unit rate law provides that during the 45 days preceding a primary and 60 days preceding a general election, broadcastes must make advertising time available to candidates at the lowest unit rate "offered or sold by a station for a particular type of advertisement at a particular time. Even if the candidate only buys one spot, he is entitled to any volume discount offered for that class of time." See, "Congress and the Media—Beyond the 30 Second Spot: Enhancing the Media's Role in Congressional Campaigns," Center For Responsive Politics (1988), p. 29. In contrast, the "comparable use" provision only requires that broadcasters make any discounts available to candidates; broadcasters are not required to sell a single spot at the rate available for volume discounts. Id. This interpretation was affirmed by various FCC decisions [2] and the U.S. Court of Appeals in *Hernstadt* v *FCC*, 677 F.2d 893 (D.C. Cir. 1980).

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[1] This provision still applies to uses of broadcast stations by candidates at times other than immediately before elections.

[2] See, Triangle Publications, Inc., 23 FCC 2d 760 (1967); WHDH, Inc., 23 FCC 2d 723 (1967).

While the 1972 law appeared to work for some time, it was clear there was confusion concerning the interpretation of the lowest unit rate provision. In addition, the methods by which broadcasters sell advertising spots have changed greatly, with the rate card fast becoming a relic. These changes led the FCC to issue a Public Notice on August 4, 1988, attempting to clarify broadcasters' obligations under section 315(b) of the Act.

The FCC declared that stations can charge different rates for preemptible and non-preemptible spots, but they must charge all candidates the lowest possible rates in either class. Thus, a station cannot charge a candidate $50 for a preemptible spot and then charge a commercial advertiser $40 for a similar spot during the same period. The FCC also stated that if a campaign advertisement is preempted, the broadcaster must air the spot before the election. In addition, if the period when the "make good" advertisement is aired goes for a lower rate to other advertisers, then the broadcaster must give the candidate a rebate. For example, if a candidate paid $50 for a spot that is preempted and the spot is aired on a later date during a period where other advertisers pay $30, the candidate must get a $20 rebate. Finally, the FCC reminded licensees that if they have established fixed rates for political candidates, they cannot raise those rates during the pre-election season unless all of the rates are raised. Despite the release of this notice, the FCC estimated that they received in the last election cycle between 50 and 75 inquiries per day requesting clarification of this law. See, S. Hrg. 100–953, p. 13 (testimony of Milton Gross).

The Committee believes this FCC action addresses only some of the problems now existing. As described in the next section, these problems continue, are often severe, and are not isolated cases. It is for that reason that the reported bill is necessary.

LOWEST UNIT RATE IN PRACTICE

Ninety-eight percent of American households have televisions; more households have televisions than indoor plumbing. Three-fifths have two or more TVs. On average, adults spend over four hours a day watching television. According to a recent Roper survey, TV is the only source of news for 50 percent of Americans. Today, "most, if not all of the information the American voter receives about a candidate is derived from television and radio. Broadcast media 'legitimizes' a candidacy." See, S. Hrg. 101–227, p. 24 (testimony of Jan Crawford).

Given the importance of television to political campaigns, it is important that the information conveyed by television is enhanced, which is the reason for the lowest unit rate provision. However, since the lowest unit rate legislation was enacted, the broadcast advertising landscape has changed significantly. The lowest unit rate provision is no longer effective in achieving its intended goal—enhancing the information available to the electorate by reducing campaign costs. At the 1989 Senate hearing on S. 1009, Jan Crawford, a political consultant, succinctly set out the primary factors responsible for the decline of the provision's effectiveness:

(1) The cost of advertisements is now determined by what the market will bear.

(2) Political candidates are the only advertisers who pay the fixed rates to ensure that they are able to reach the targeted audience.

(3) The FCC's 1988 Public Notice caused more confusion concerning the application of the lowest unit rate than existed before its release.

Analysis of each of the problems articulated by Ms. Crawford, which are widely recognized, demonstrates the necessity of this legislation.

COSTS OF POLITICAL ADVERTISING

In 1956, the year in which the FCC began to collect data on broadcast spending, candidates spent less than six percent of their campaign budgets on radio and television combined. The total spent on electronic media for all elections—Federal, State, and local—that year was $10 million. Thirty years later, that national total was surpassed in a single Senate race in California. The two candidates, Ed Zschau and Alan Cranston, spent over $13 million on media alone.

In campaigns today, of broadcast advertisements, television advertisements are the single greatest expense. It is estimated that in Senate races, candidates devote on the average between 40–60 percent of their campaign expenditures to television advertisements. See, S. Hrg. 101–277 at 24–25 (testimony of Jan Crawford). In contested races, this percentage may go as high as 80 percent. The average Senate campaign today costs approximately $4 million.

As candidates have increased their reliance on television advertisements, the cost of advertising has increased. One witness at the Committee's hearing estimated that the cost of airing political spots has increased 1,700 percent in the last decade. S. Hrg. 101–277, p. 23 (Testimony of Jan Crawford). In general, television advertising costs have more than tripled in the last eight years. Broadcast advertisements are now the single largest expense in most Congressional campaigns. See, Congress and the Media, supra at p. 13.

Witnesses at both the 1988 and 1989 Committee hearings stated that the cost of air time is so high that it distorts the campaign process. It limits what the candidate pays and what the electorate hears. It makes it much more difficult for a candidate to challenge an incumbent.

These witnesses also testified that the high cost of broadcast time has other, more insidious, effects. It forces candidates to spend far too little of their time and energy on the issues and far too much on raising money from political action committees. It makes Members of Congress reluctant to offend well-financed special interest groups. The need for constant fundraising raises the specter of undue influence and lessens the public's confidence in its government. See, S. Hrg. 100–953 P. 48 (testimony of Robert Squier).

ADVERTISING PRACTICES

Since 1972, "broadcasters have found ways to whittle away" at the lowest unit rate law. See, S. Hrg. 101–227, p. 23 (testimony of Jan Crawford). Broadcasters have the ability to increase rates for

political advertisements and circumvent the intention of the law because the public and these candidates rely so heavily on the broadcast media for information. In other words, the candidates and the public have no alternative, and thus little bargaining power.

Today, broadcast stations offer two basic classes of time to advertisers: (1) fixed or "non-preemptible" time; and (2) preemptible time. Non-preemptible time is more expensive than preemptible time because the broadcast station commits to air non-preemptible spots. If the spot is not aired, the station has to air the spot in a similar time period as soon as possible.

The difficulty facing political candidates concerns preemptible time because there is no guarantee that the preemptible ads will be aired at the time needed or even prior to the election. There are three basic problems facing candidates: (1) Political candidates often pay more for spots than commercial advertisers because candidates are told that they have to purchase non-preemptible time to ensure their spots will be aired; (2) there have also been cases of discrimination where one candidate buys preemptible time and has all of his ads run, while another has to pay the non-preemptible rate to ensure that his ads are run; and (3) the price of all classes of ads, but particularly for preemptible spots, varies depending on the time of day aired and when the ads are purchased.

Political rates v. *Commercial Rates.* In its August 4, 1988 Public Notice, the FCC identified the problem:

> "[n]onpreemptible fixed rate spots are frequently offered to political candidates only. These rates are higher than the prevailing preemptible rates because they guarantee the airing of the spot at a particular time. They are often published at the beginning of a preelection period in what is known as the 'political rate card.' To avoid the vagaries of preemption, political candidates often choose to pay the higher non-preemptible rate."

When the FCC was questioned at the Committee's hearings as to the difference in price for political advertisements, Mr. Gross, Chief of the FCC's Political Programming Division replied: "We've seen [the non-preemptible rate] three and four times the preemptible rate. We just had an informal case where the preemptible rate was $350 and the fixed rate was $800." S. Hrg. 100–953, p. 18. In addition, stations set aside specific spots for political advertisements which sell at rates much higher than the rates offered to commercial rates. Cathy Farrell, a media consultant, gave the Committee an example: "I had another situation where the station said that our rate now is $800, and I said . . . the going rate in the market is between $200 and $250 for late news. And he said not for political time, and I said what are you talking about? He said well, we set aside a special spot for political candidates in the late news." S. Hrg. 100–227, p. 34.

What is the justification for this disparity? Broadcasters, because of their often long standing relationship with commercial advertisers, rarely preempt commercial spots. Commercial advertisers are responsible for 96 to 99 percent of the average broadcast station's advertising revenue. Thus, "it is highly unlikely that a 'most-fa-

vored' client would be preempted." S. Hrg. 101-227, p. 28 (testimony of Jan Crawford). In addition, many commercial spots are not as time-sensitive as political advertisements, and consequently, commercil advertisers are not as concerned if a spot airs on a particular day. Political advertisements, on the other hand, are very time-sensitive.

> Unlike its commercial counterparts, political advertising placement is like a three-dimensional chess game, comprised of intricate moves and subtle strategies, the clock ticking away towards the election day deadline. It is imperative that campaign spots air within the political rate periods and within specific programs or dayparts as current FCC regulations, political candidates must pay fixed rates if the desired plan is to move forward.

Id. at p. 27 (testimony of Jan Crawford); see also, p. 34 (testimony of Catherine Farrell).

Moreover, political candidates even face the risk of being preempted by other candidates. According to one witness, Jan Crawford, it is not unusual to see situations where candidates of the same party are preempting one another.

Candidates thus have little choice. They are in the difficult position of having to pay the higher "political rate" to ensure they reach their targeted audience and to avoid being preempted in favor of a commercial advertiser.

Discrimination Among Candidates.—Not only do candidates run the risk of being preempted by other candidates, they also find that the price paid by two candidates for advertisements can vary significantly even if the advertisements are of the same length and aired at approximately the same time and day of the week. Numerous examples of this practice were presented at the Committee's hearings. In all of the examples, the difference in price was attributed solely to the difference in the price of non-preemptible and preemptible time.

> The Bush/Quayle campaign paid for ads in the same class and in the same show. The Bush campaign was charged $100 for a 30 second spot and in the same program . . . [this] candidate was charged $200. Then another station charged the candidate $1,300 for a spot in the late news, and in the same program, the Bush campaign paid $550 . . . another candidate [was] offered spots in the late news for $250. My colleague was told that his rate, on the late news, the same program, would be $800.

S. Hrg. 101-227, p. 51. See also Id. at 35; see generally, S. Hrg. 100-953, p. 46 (testimony of Robert Squier), p. 18 (testimony of Milton Gross).

In 1986, one St. Louis television station charged U.S. Senate candidate Kit Bond, on average, five times as much per advertising spot as his opponent. The spots were comparable. In most cases, they were of identical length on identical television shows—the shows that politicians target—such as morning and evening news, and the lead-ins to those programs.

The list of complaints of discrimination between candidates is very long. The fact remains that broadcasters have the ability to favor one candidate over another by the way they sell their spots.

Variations in the Price of Spots.—The testimony also pointed out that the way advertising time is sold has changed significantly over the past 20 years. In 1971, advertising time was sold by rate cards which set forth the cost of ads in different classes of time. Rate cards are rarely used today. The process now resembles an ongoing auction—with broadcasters receiving as much as they can for each advertisement. Moreover, since advertisements are sold continuously, the rates can change by the hour. For example, in 1989, a "Good Morning America spot on a station went from $80 to $400 in one week, and there was no arguing with them. They said that we have nothing else, that is, take it or leave it." S. Hrg. 100–227, p. 34 (testimony of Catherine Farrell). These variations in price and the unpredictibility of the price fluctuations make it very difficult for candidates to budget for advertising. In some cases these fluctuations make it impossible for candidates to compete in the market for advertising spots. Moreover, the current market for air time can have a disparate impact on candidates who are challengers. Challengers often are not as well financed as the incumbents, and have less money to devote to advertising.

Other Problems.—"Years ago the lowest unit charge regulations worked. That was before the stations were able to convince the FCC to change the regulations to allow different rates for different conditions, to change rates on a weekly, [now hourly] basis," and to ignore the spirit of the law. See, S. Hrg. 101–227, p. 11 (testimony of Catherine Farrell). The problems with the way stations are permitted to sell advertising time have been detailed above. Because stations essentially have complete control over the rates charged, there arise issues regarding the station's obligation to a candidate when a spot has been preempted; how to determine when there is a violation of the law; and how to remedy violations.

When a candidate's spot has been preempted, the station must air the advertisement before the election ("a make-good") "where the licensee would so treat its most favored commercial advertiser when time is of the essence." 1988 FCC Public Notice. The problem is that "it is very rare that the 'make-goods' are run in the same daypart as originally purchased." S. Hrg. 100–277, p. 30. For example, a candidate may purchase spots during prime time programs aimed at older audiences only to find the spot preempted with the make-goods aired during a soap opera. Obviously, the audience for the make-good is far different than the audience originally targeted. Since the FCC does not require that broadcasters air the make-goods during the same daypart, candidates are forced to purchase fixed time.

In addition, the FCC rules do not have the practical effect of allowing candidates to ascertain when stations have violated the lowest unit rate law. To assert a violation of the lowest unit rate provision, a candidate must demonstrate that he or she has been charged a higher rate than another candidate or a commercial advertiser. In other words, the burden is on the candidate to prove that someone else has paid a lower rate. However, while the FCC requires that candidates disclose the rates charged for political

spots, it does not require stations to disclose the rates charged for commercial spots. Instead, the FCC relies on the fact that "in many instances, the station's commercial practices are known to many people, including competitors, ad agencies, and a lot of times the candidates themselves employ ad agencies who also purchase commercial time on that very station. Those ad agencies will know if the candidate is getting the lowest unit charge, for example." Thus, the burden is on the candidates. S. Hrg. 100-953, p. 14, (testimony of Milton Gross).

Once a candidate has reason to believe that he or she is not being charged the lowest rate available, the complaints are handled by the FCC informally over the telephone. During the 1988 elections, the FCC was receiving "anywhere from 50 to 75" (S. Hrg. 100-953, p. 13) inquiries a day, most of which were resolved over the telephone. The FCC concedes that it has no alternative. A more formal complaint would take too much time, and the election may pass before the FCC can act.

As result of the FCC's enforcement process, in the majority of cases, neither the candidates nor the FCC know whether candidates are receiving the lowest unit rate. In many instances, candidates learn, to their dismay, after the election, that they did not receive the lowest rate. Often they learn this only when they receive a refund check from the station. For example, one candidate was reimbursed $18,655 for "overcharging" on 162 separate occasions. S. Hrg. 100-277, p. 51. Ms. Farrell testified that months after a campaign, she was notified by a station that she had a $5,000 credit for overcharges. Moreover, she said that has happened on about five occasions. Id. at 35. This means that a candidate has that much less money to devote to his or her campaign. Moreover, it can be assumed that there may be stations who do not go back to make sure that candidates received the lowest rate. This means that the purpose of the rule is being severely undercut.

In short, the lowest unit law is no longer achieving its intended result, in large part because the process has become so complicated and there is little accountability.

THE LESIGLATION

As the Democratic media buyer Bob Squier testified at the Committee hearing in September 1988, "[t]he memorial service for lowest unit rate was held years ago . . ."

In this connection, a number of observers favor free air time for candidates. Three bills were introduced in the 100th Congress to provide free broadcast time to Congressional candidates (S. 751, the Informed Electorate Act of 1987, H.R. 2923, the Informed Electorate Act of 1987, and H.R. 521, the Free Political Broadcasting Act) and one bill has been introduced in the 101st Congress (S. 751, the Informed Electorate Act). Over 60 percent of the political challengers surveyed by the bipartisan Center for Responsive Politics supported free time for candidates. See, Congress and the Media, supra p. 5. The Center itself recommends that Congress enact a free broadcasting plan. Id. at p. 7.

Those who make the case for free broadcasting time point out that broadcasters use the spectrum, a valuable public resource.

They argue that free time is a small request to make in return. Those who cut timber in national forests, graze cattle on Federal lands, or mine minerals on Federal property have to pay fees. The argument is that broadcasters "owe" something for their use of a scarce public commodity.

The Committee has yet to examine the issue of free air time for candidates, and it understands the adoption of such a proposal has great consequences. The Committee believes that the problems with the lowest unit charge provision are significant and are more easily solved than those issues relating to the idea of free air time for candidates. In this regard, the Committee believes that the law on lowest unit rate simply needs to be clarified so that it works to achieve the original intent. Broadcasters and cable operators should be required to sell fixed time to candidates at the lowest preemptible rate. To achieve this, the reported bill simply deletes the word "class", permitting broadcasters to have only one class of commercial time for candidates' advertisements. It also prohibits licensees from preempting political advertisements. The Committee believes these two changes will ease the application of the lowest unit rate requirement, lower the cost of advertising to political campaigns significantly, and thus enhance the information received by the electorate.

FLAWED ARGUMENTS AGAINST THE BILL

Opponents raise a host of problems with the legislation which the Committee does not find persuasive. The following lists each of these supposed problems and the Committee's rationale for rejecting them.

1. While broadcasting advertising costs are a significant part of overall campaign expenses, they are not the only costs, and it is inappropriate for Congress to single out broadcasters as the cause of higher campaign costs.

The Committee's hearings demonstrate the importance of broadcast advertisements to political campaigns. In most races, approximately one-half of the money expended goes to buying broadcast time. In contested races, this amount jumps dramatically to over three-quarters. It is not an exaggeration to say that without broadcast time, a candidate cannot get elected.

There are certainly many other costs in campaigns. In some unique races, these costs may exceed that of buying broadcast time. However, it is clear that the most significant expense in virtually every race is broadcast time. One need look no further than the close correlation between increases in broadcast advertising rates and overall campaign expenses. By addressing today's most significant expense, the Committee believes it is taking a large step toward holding down campaign costs and increasing the amount of information available to the electorate.

While the lowest unit rate provision only applies to broadcasters, the Committee does not believe it is treating them unfairly. Under the Act, broadcasters are regarded as public trustees, who are obligated to serve the public interest in return for obtaining use of a valuable, public resource—the

electromagnetic spectrum. This does not mean that the government may impose any obligation on broadcasters regardless of the government's interest and its effect on broadcasters. It does mean that reasonable obligations—that forward a governmental interest and are implemented in the least intrusive manner—can be imposed. [3]

The lowest unit rate provision, as amended by this legislation, forwards the important governmental interests of lowering campaign costs and providing information to the electorate. While some Members of the Committee believe broadcasters could be required to provide free time to candidates, this legislation imposes a lesser obligation: the provision of the lowest unit rate. This is the rate used by a broadcaster's most favored advertisers. In light of the fact revenues from political campaigns are less than one percent of broadcasters' total annual revenues, the Committee believes any burden is minimal, especially in relation to the benefits.

2. There is no way this bill can reduce the overall amount spent on media advertising since candidates will buy more spots.

This argument assumes that the supply of broadcast time available for political advertisements will increase. That is unlikely, however. There are physical and business reasons that limit additional advertisements on television and radio. Candidates' budgets are limited. There is limited broadcast advertising time available.

3. Given this additional pressure on the inventory of advertising time, broadcasters may end up limiting the overall availability of spots.

Testimony at the Committee's hearings indicated that broadcasters already limit the availability of spots to political candidates. The record is replete with statements about candidates being unbable to buy the amount of time they wish, when they wish. The Congress has tried to address part of this problem with the enactment of section 312(a)(7) of the Act—the reasonable access provision for candidates for Federal office. The Committee, however, recognizes the limitations of this provision, both with respect to enforcement and the fact that it does not apply to candidates for State and local offices. Because of the importance of broadcast time to campaigns, the Committee is concerned that this speculation of the bill's opponents—that spots will be limited—will become a reality. The Committee strongly encourages broadcasters to follow the spirit not only of the reasonable access provision but also of the public trustee standard, and to make adequate time available for candidates for all candidates for public office. The Committee will not be reluctant to address any problems that arise in this area.

4. There are few examples of bias by broadcasters, and the current law is adequate to remedy any of these problems.

The Committee recognizes that most broadcasters make a good faith effort to comply with the law. As applied today, however, the law is very complex and difficult to enforce. Fur-

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[3] For a more complete explanation of the public trustee obligation of broadcaster, see the Committee's Report on S. 577, the Fairness in Broadcasting Act of 1989 (S. Rpt. 101-141).

ther, the Committee's hearing record contains numerous examples of discrepancies between the rates paid by two candidates and between those paid by a candidate and a commercial advertiser. Moreover, the record demonstrates that these problems have occurred regularly during many election cycles. It is simply too easy for a broadcaster to communicate to a candidate or commercial advertiser what type of spot to buy without leaving any written documentation. In addition, the new auction-type method for the sale of broadcast advertisements causes prices to change frequently and is difficult to monitor. In the end, the law today is very difficult to administer and enforce, greatly diminishing its effectiveness.

Thus, the Committee believes that the reported bill is necessary to ensure that all candidates are treated fairly with respect to broadcast time as originally intended.

Legislative History

S. 1009 was introduced on May 17, 1989, by Senator Danforth, with Senators Hollings, Inouye, Bryan and McConnell as co-sponsors. Almost identical bills, S. 733 and S. 734, have been introduced by Senator McConnell. The Committee held a hearing on these bills on August 2, 1989. On October 5, 1989, the Committee met in open executive session to consider S. 1009 and approved it without objection.

Last Congress, on September 15, 1988, the Communications Subcommittee held a hearing on S. 2657 (S. Hrg. 100-953) which was virtually identical to S. 1009. No action was taken on S. 2657 last Congress.

Summary of Major Provisions

Section 3 of the bill deletes the word "class" from section 315(b)(1) of the Act, thus eliminating the different classes of time for political advertisements. In addition, section 3 adds a new provision to section 315 which prohibits broadcasters from preempting political advertisements.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 12, 1989.

Hon. Ernest F. Hollings,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 1009, the Campaign Advertising Act, as ordered reported by the Senate Committee on Commerce, Science, and Transportation, October 5, 1989.

We expect that enactment of the bill would result in no cost to the federal government or to state or local governments. S. 1009 would ensure that candidates for public office can purchase non-preemptible television advertising spots at the lowest available unit charge.

If you wish further details on this estimate, we will be pleased to provide them. The CBO contact is Douglas Criscitello.

Sincerely,

ROBERT D. REISCHAUER,
Director.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

This legislation clarifies existing law with regard to lowest unit rates for candidates' broadcast time. Thus, it should have no impact on the number of businesses or persons regulated nor the privacy of those businesses or persons. Furthermore, it should have no economic impact except to the extent that candidates pay less for air time, and should not increae paperwork burdens.

SECTION-BY-SECTION ANALYSIS

SECTION 1.—SHORT TITLE

This section states that the short title of the reported bill is the "Campaign Advertising Act."

SECTION 2.—FINDINGS

This section enumerates the findings made by Congress concerning rates charged fro political advertisements.

(1) To provide the public with the opportunity to make informed decisions during elections and ensure that candidates' messages reach the members of the public to which they are targeted, candidates must be able to purchase, at the lowest cost, nonpreemptible advertising spots from broadcast and cable television stations.

(2) The way that advertising time, prior to elections, is sold to political candidates has changed significantly since 1972 when the Act was amended to require that candidates receive the lowest unit charge for advertising spots.

(3) The changes in the way advertising spots are sold has made interpreting and enforcing the lowest unit charge provision of the Act difficult and complex.

(4) To guarantee compliance with the original intent of the lowest unit charge provision of the Act, it is necessary to clarify and simplify the provision.

(5) Candidates for political office must be treated as well as the most favored commercial advertisers and cable advertisers in connection with the setting of charges and discounts for advertising time.

SECTION 3.—AMENDMENT TO COMMUNICATIONS ACT

(1) This section amends subsection (b)(1) of section 315 of the Act by striking the words "class and," thereby effectively prohibiting broadcasters and cable operators from discriminating between political candidates and commercial advertisers who purchase advertising time during a specific program or time period.

(2) Subsections (c) and (d) of section 315 of the Communications Act are redesignated as subsections (d) and (e), respectively.

(3) Section 315 of the Communications Act is also amended to provide that a licensee is prohibited from preempting advertisements purchased by legally qualified candidates who have purchased advertising time pursuant to the provisions of section 315(b)(1).

The purpose of this legislation is to ensure that candidates for political office pay the lowest rate available for a particular daypart or program and that the candidates' ads cannot be preempted. Thus, for example, if the lowest rate is for preemptible advertisements, then the candidates will pay the preemptible rate, and the spots cannot be preempted.

The Committee urges the FCC to consider what mechanisms can be put in place to ensure that broadcasters comply with this law. For example, the FCC may want to conduct random checks of licensees' advertising rates, especially during the election period.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

Section 315 of that Act

FACILITIES FOR CANDIDATES FOR PUBLIC OFFICE

SEC. 315. (a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: *Provided,* That such licensee shall have no power of censorship over the material broadcast under the provision of this section. No obligation is hereby imposed under this subsection upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any—

(1) bona fide newscast,

(2) bona fide news interview,

(3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or

(4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto),

shall not be deemed to be use of a broadcasting station within the meaning of this subsection. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

(b) The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed—

(1) during the forty-five days preceding the date of a primary or primary runoff election and during the sixty days preceding the date of a general or special election in which such person is a candidate the lowest unit charge of the station for the same [class and] amount of time for the same period; and

(2) at any other time, the charges made for comparable use of such station by other users thereof.

(c) A licensee shall not preempt the use, during any period specified in subsection (b)(1), of a broadcasting station by a legally qualified candidate for public office who has purchased such use pursuant to the provisions of subsection (b)(1).

[*(c)*] *(d)* For purposes of this section—

(1) the term "broadcasting station" includes a community antenna television system; and

(2) the term "licensee" and "station licensee" when used with respect to a community antenna television system mean the operator of such system.

[(d)] *(e)* The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

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